Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-983

UNITED STATES OF AMERICA, APPELLANT

v.

HUBERT L. WILL, ET AL.

No. 79-1689

UNITED STATES OF AMERICA, APPELLANT

v.

HUBERT L. WILL, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENTS FILED DECEMBER 21, 1979 AND APRIL 25, 1980
JURISDICTION POSTPONED TO HEARING ON MERITS FEBRUARY 19, 1980 AND JUNE 16, 1980

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OCTOBER TERM, 1979

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UNITED STATES OF AMERICA, APPELLANT

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HUBERT L. WILL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

RELEVANT DOCKET ENTRIES

JUDGE ROSZKOWSKI

CORRECTED AMENDED COMPLAINT

78 C 420

(D-1) THE UNITED STATES OF AMERICA

(P-1) WILL, HUBERT L. (P-2) BARTELS, JOHN R. (P-3) BRAMWELL, HENRY (P-4) BURKE, LLOYD H. (P-5) CAMPBELL, WILLAIM J.; FRED J. CASSIBRY, MARK A. COSTANTINO, JACK M. GORDON, GEORGE B. HARRIS, EDWARD R. NEAHER, THOMAS COLLIER PLATT, JR., GEORGE C. PRATT, AND SPENCER WILLIAMS, on their own behalf and on behalf of all persons similarly situated.

ATTORNEYS:

DEFENDANT
BARBARA ALLEN BABCOCK
Asst Atty General

ANTHONY J. STEINMEYER

LAWRENCE J. JENSEN
Department of Justice
10th and Pennsylvania Ave NW
Washington, D. C. 20530
202-739 3383

PLAINTIFF
KEVIN M. FORDE
RICHARD J. PRENDERGAST
111 W. Washington #2025
60602 726-5015

2/7/78	Filed Complaint and three copies.
2/7/78	Filed Civil Cover Sheet.
2/7/78	Filed Appearance of plaintiffs' attorneys with Affidavits re Rule 39.
2/7/78	Issued summons and three copies with three copies of the Complaint.
2/22/78	Summons returned from U. S. Marshal for failure to file USM-285.
2/23/79	Filed copy of letter addressed to Chief, General Litigation Section Civil Division, Department of Justice, Washington, D.C. from U. S. Attorney, N/D Illinois requesting recusal from participation in this cause.
2/28/78	Enter order dated February 10, 1978 (a) Transfer of Case to the Executive Committee for Reassignment. The above captioned cause is currently pending on my calendar. I recommend to the Executive Committee that this case be reassigned by lot to another judge of this Court. The reasons for my recommendation are indicated

on the reverse of this form. Marshall. J.
(b) It is hereby Ordered that the Clerk reassign the above-captioned matter by lot to either Judge Bua or Judge Roszkowski, as such judges are the only members of this Court not potentially members of the class involved in these proceedings.
FOR THE EXECUTIVE COMMITTEE
James B. Parsons, CJ. Notices mailed 2/28/78

3/17/78 Filed plaintiff's Notice of Filing.

3/17/78 Filed Amended Complaint—new plaintiffs added.

4/10/78 Filed Executive Order: Approval of the Executive Committee is given to Honorable Stanley J. Roszkowski to conduct any or all of the proceedings in Bartels. et al v. United States of America—78 C 420 outside the Everett McKinley Dirksen Building at Chicago, Illinois, in, to-wit, the United States Courthouse at Rockford, Illinois in the Western Division of the Northern District of Illinois, ENTER For the Executive Committee JAMES B. PARSONS, Chief Judge.

4/10/78 Filed defendant's Answer.

4/25/78 Filed plaintiff's Notice of Motion; Plaintiffs' Motion for Class Determination.

4/26/78 Enter order dated April 25, 1978: Plaintiffs shall file their supporting memorandum on or before May 1, 1978; defendant shall file its answering memorandum on or before May 11, 1978; plaintiffs may respond within five (5) days thereafter. Roszkowski, J. Notices mailed 4/26/78

5/1/78 Filed Plaintiffs' Memorandum in Support of Their Motion for Class Determination.

5/16/78 Filed Plaintiffs' Reply Memorandum in Sup-

port of Their Motion for Class Determination.

5/16/78 Filed Defendant's Response to Plaintiffs' Motion for Class Determination.

6/5/78 Filed defendants' Motion for Judgment on the Pleadings.

6/8/78 Enter order dated June 6, 1978: Plaintiffs are directed to respond to defendant's motion for judgment on the pleadings and memorandum in support by June 22, 1978. Defendant's reply to the response to be filed by July 7, 1978.—Roszkowski, J.
Notices mailed 6/8/79

6/23/78 Enter order dated June 22, 1978: By stipulation of the parties:
1. Defendant is granted leave to file Motion for Judgment on the pleadings and supporting memoranda in excess of 15 pages.
2. Plaintiffs are given until June 23, 1978 to file Motion for Summary Judgment.
3. Plaintiffs given until July 6, 1978 to file memorandum in support of their motion for summary judgment and opposition to the defendant's Motion for summary judgment on the pleadings.
4. Defendant is given until August 7, 1978 to file its opposition to plaintiffs' motion for summary judgment and reply brief.
5. Plaintiffs have until August 22, 1978 to file reply brief in support of their motion for summary judgment or judgment on the pleadings.
6. The parties are granted leave to file said briefs in excess of 15 pages (DRAFT).
Roszkowski, J.
Notices mailed 6/23/78

6/23/78 Filed Plaintiff's Motion for Summary Judgment.

7/10/78	Enter order dated July 7, 1978: Per stipulation of the parties, IT IS ORDERED: 1. Plaintiff's brief in support of their motion for Summary Judgment or judgment on the pleadings and their opposition to the Motion of defendants for Judgment on the pleadings may be filed on or before July 11, 1978. 2. Defendant shall have 30 days thereafter to file its brief in opposition to Plaintiffs' Motion for Summary Judgment or Judgment on the pleadings and its reply brief in support of its motion for judgment on the pleadings. 3. Plaintiffs shall have 15 days thereafter to file a Reply Brief in support of their motion for summary judgment or judgment on the pleadings. 4. The parties are granted leave to file briefs not to exceed 30 pages in length. Roszkowski, J./ Notices mailed 7/10/80
7/12/78	Filed plaintiff's Motion for leave to file Memorandum.
7/12/78	Filed Memorandum in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendant's Motion for Judgment on the Pleadings.
7/13/78	Enter order dated JULY 12, 1978: Plaintiff's motion to file instanter their memorandum in support of plaintiffs' motion for summary judgment and in opposition to defendant's motion for judgment on the pleadings totaling 36 pages is granted. Roszkowski, J. Notices mailed 7/13/78
8/17/78	Enter order dated August 16, 1978: By agreement of the parties, the time within which the defendant may file its reply brief

	is extended to and including August 21, 1978. Plaintiff may file their reply brief by September 18, 1978. Roszkowski, J. Notices mailed 8/17/78
8/18/78	Filed defendant's opposition to plaintiffs' motion for summary judgment and reply to planitiffs' opposition to defendant's motion for judgment on the pleadings.
9/18/78	Filed Plaintiff's Reply Brief.
2/26/79	Filed 2/23/79 Plaintiff's Citation of Supplemental Authorities.
3/21/79	Enter order dated 3/20/79: It is hereby ordered that this action and both counts thereof may properly be maintained as a class action pursuant to Rule 23(b)(2) of FRCP (DRAFT). Roszkowski, J. Notices mailed 3/21/79
8/30/79	Enter order dated 8/29/79: Plaintiffs motion for summary judgment is granted. (DRAFT) ROSZKOWSKI, J Mailed notices 8/30/79 *JS-6*
9/24/79	Enter Judgment on Decision by the Court dated 9/24/79.
9/26/79	Filed 9/26/79 Federal defendants' Notice of Appeal to the Supreme Court of the U. S.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 78 C 420

HUBERT L. WILL, JOHN R. BARTELS, HENRY BRAMWELL, LLOYD H. BURKE, WILLIAM J. CAMPBELL, FRED J. CASSIBRY, MARK A. COSTANTINO, JACK M. GORDON, GEORGE B. HARRIS, EDWARD R. NEAHER, THOMAS COLLIER PLATT, JR., GEORGE C. PRATT, and SPENCER WILLIAMS, on their own behalf and on behalf of all persons similarly situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED COMPLAINT

Plaintiffs, by their counsel, complain on their own behalf and on behalf of all persons similarly situated, asserting the following as their claim against the United States:

COUNT I

JURISDICTION

1. This action arises under Article III of the Constitution of the United States. Plaintiffs invoke the jurisdiction of this Court under Title 28, United States Code, Section 1346(a)(2). The individual claim of plaintiffs and that of each member of the class they seek to represent does not exceed Ten Thousand Dollars ($10,000.00).

PARTIES

2. (a) Plaintiff JOHN R. BARTELS is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(b) Plaintiff HENRY BRAMWELL is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(c) Plaintiff LLOYD H. BURKE is a United States District Judge and a member of the United States District Court for the Northern District of California.

(d) Plaintiff WILLIAM J. CAMPBELL is a Senior United States District Judge and a member of the United States District Court for the Northern District of Illinois.

(e) Plaintiff FRED J. CASSIBRY is a United States District Judge and a member of the United States District Court for the Eastern District of Louisiana.

(f) Plaintiff MARK A. COSTANTINO is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(g) Plaintiff JACK M. GORDON is a United States District Judge and a member of the United States District Court for the Eastern District of Louisiana.

(h) Plaintiff GEORGE B. HARRIS is a Senior United States District Judge and a member of the United States District Court for the Northern District of California.

(i) Plaintiff EDWARD R. NEAHER is a United States District Judge and a member of the United States District Court for the Eastern District of New York

(j) Plaintiff THOMAS COLLIER PLATT, JR., is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(k) Plaintiff GEORGE C. PRATT is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(l) Plaintiff HUBERT L. WILL is a United States District Judge and a member of the United States District Court for the Northern District of Illinois.

(m) Plaintiff SPENCER WILLIAMS is a United States District Judge and a member of the United States District Court for the Northern District of California.

3. Plaintiffs were appointed to their present offices

within the United States Judiciary by the President of the United States with the advice and consent of the United States Senate pursuant to Article III, Section 2 of the Constitution of the United States and have served as Federal Judges pursuant to Article III of the Constitution of the United States during the period commencing October 1, 1976 through and including the filing of this action.

4. The defendant is the United States of America.

CLASS ACTION ALLEGATIONS

5. Count I of this action is brought by plaintiffs on their own behalf and as a class action on behalf of all persons who are serving or who have served as Judges of the United States pursuant to Article III of the Constitution of the United States during part or all of the period commencing October 1, 1976 and continuing to March 1, 1977.

6. The Class which consists of approximately 600 persons is so numerous that joinder of all its members before this Court is impracticable.

7. The claims of plaintiffs are typical of the claims of the Class.

8. The common questions of law and fact raised by this Complaint affect all members of the Class and such common questions predominate over any questions affecting only individual members of the Class. Common relief is sought herein on behalf of all members of the Class, and this class action is superior to other available methods for the fair and efficient adjudication of the controversy which forms the subject matter of this Complaint.

9. The named plaintiffs, with their counsel, will fairly and adequately protect and represent the interests of the Class.

10. The management of the proposed class action will not be difficult, since the defendant has knowledge of the names, addresses and identities of all the members of the Class. Moreover, the factual and legal issues raised by this Complaint will not require extended contact with any member of the Class, since the Complaint concerns a

course of conduct by defendant which is applicable to the whole class and which has been imposed in an identical manner upon plaintiffs and each member of the Class.

CLAIM

11. Article III, Section 1 of the Constitution of the United States, provides in pertinent part that Judges of the United States Courts "shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office".

12. Under the Executive Salary Cost-of-Living Act (P.L. 94–82), 5 USC § 5318 and 28 USC § 461 enacted August 9, 1975, the annual rate of pay for positions at each level of the Executive Schedule, (which schedule includes all Federal Judges appointed and serving pursuant to Article III § 1 of the United States Constitution) is required to be adjusted by a percentage equal to the average annual percentage increase in the General Schedule, granted pursuant to the Federal Pay Comparability Act of 1970 5 USC § 5305 et seq., which provides the mechanism for annually adjusting the rates of pay of most federal employees.

13. On or about October 1, 1976 in accordance with the applicable provisions of the Federal Pay Comparability Act of 1970, 5 USC § 5305 et seq., the annual rates of pay for General Schedule employees were increased by an average of 4.8 per cent.

14. Accordingly and pursuant to the applicable provisions of the Executive Salary Cost-of-Living Act and 5 USC § 5301 et seq., the President on October 1, 1976 issued Executive Order 11941, adjusting all Executive Schedule salaries, including the salaries of all Federal Judges by approximately 4.8%. The annual salary of Circuit Judges, Judges of the Court of Customs and Patent Appeals and Judges of the United States Court of Claims were thus established at $46,800 and the annual salary of District Judges and Judges of the United States Customs Court were established at $44,000.

15. On October 1, 1976, the Legislative Branch Appropriations Act, 1977, P.L. 944-440, was passed by Congress, which Act, *inter alia* prohibited payment of the full salary to which Federal Judges were then entitled by law, and specifically limited the appropriation for judicial salaries to a lesser amount, i.e., $44,600 for Circuit Judges, Judges of the Court of Customs and Patent Appeals and Judges of the United States Court of Claims and $42,000 for District Judges and Judges of the United States Customs Court, said amount being the salary levels in effect prior to those established as referred to in paragraph 14 above.

16. As reflected in Bulletin No. 492 issued by the Director of the Administrative Office of the United States Courts (the first page of which is attached hereto as Complaint Exhibit A) and as further reflected in a letter issued by the Acting Comptroller General of the United States on September 21, 1976 to Congressman David N. Henderson (reprinted in the Congressional Record of September 22, 1976 and attached hereto as Complaint Exhibit B), the actions of Congress in adopting P.L. 94-440 and in refusing to appropriate funds to pay the full salary of Federal Judges did not suspend or postpone the operation of the Executive Salary Cost-of-Living Act and did not serve to limit the rates of pay established thereunder. Thus the legal rate of pay for Federal Judges was that set by the President in Executive Order 11941, i.e., $46,800 and $44,000.

17. Notwithstanding the salary levels established under 5 USC § 5318, 28 USC § 461 and the President's Executive Order 11941, the United States has failed and refused to pay the full salary provided by law and payable thereunder to the plaintiffs and each member of the plaintiffs' class.

18. By enactment of the aforesaid provision of P.L. 94-440, and by its continued refusal and failure to pay to plaintiffs and plaintiffs' class the full statutory compensation to which they were entitled during the period October 1, 1976 through March 1, 1977 under 5 USC § 5305, 5 USC

§ 5318, 28 USC § 461 and Executive Order 11941, defendant has violated and continues to violate that provision of Article III § 1 which proscribes the diminution of the compensation of a Federal Judge during his continuance in office.

19. That P.L. 94-440 is unconstitutional is clear, for in failing and refusing to pay the full salary of Judges of the United States appointed pursuant to Article III § 1, as established under Executive Order 11941, Congress has reduced and diminished their compensation as established by law, in clear violation of Article III, § 1 of the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. That this Court find that this action is a proper class action, and that the named parties adequately represent the Class.

B. That upon said findings, this Court order that the action may properly be maintained as a class action as the Class is defined by plaintiffs in this Complaint.

C. That this Court declare that the actions of the defendant as set forth in Count I of this Complaint violate the provisions of Article III, Section 1 which proscribes the diminution of judicial compensation.

D. That this Court order defendant, United States of America, to pay to plaintiffs individually and to each member of their Class all compensation due for the period October 1, 1976 through March 1, 1977.

E. That plaintiffs and each member of their Class recover whatever interest would have been earned on any compensation wrongfully withheld.

F. That plaintiffs recover the costs of this action and be granted such further relief as this Court deems just and appropriate.

COUNT II

1-4. Plaintiffs reallege, as paragraphs 1 through 4 of Count II, paragraphs 1 through 4 of Count I.

CLASS ACTION ALLEGATIONS

5. Count II of this action is brought by plaintiffs on their own behalf and as a class action on behalf of all persons who were appointed and served as Judges of the United States pursuant to Article III of the Constitution of the United States prior to July 11, 1977 and who continued to hold said office subsequent to commencement of the first pay period following October 1, 1977.

6-10. Plaintiffs reallege, as paragraphs 6 through 10 of Count II, paragraphs 6 through 10 of Count I.

CLAIM

11. Article III, Section 1 of the Constitution of the United States, provides in pertinent part that Judges of the United States Courts "shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office".

12. Under the Executive Salary Cost-of-Living Act (P.L. 94-82), 5 USC § 5318 and 28 USC § 461 enacted August 9, 1975, the annual rate of pay for positions at each level of the Executive Schedule, (which schedule includes all Federal Judges appointed and serving pursuant to Article III, § 1 of the United States Constitution) is required to be adjusted by a percentage equal to the average annual percentage increase in the General Schedule, granted pursuant to the Federal Pay Comparability Act of 1970, 5 USC § 5305 et seq., which provides the mechanism for annually adjusting the rates of pay of most federal employees.

13. Pursuant to the herein described statutory scheme, the compensation of plaintiffs and each member of their class consists of a stated salary augmented annually by a

cost-of-living adjustment which takes effect the first pay period following October 1 of each year, including 1977. Only the actual amount of said cost-of-living adjustment remains undetermined until on or about October 1 of the applicable year, that to be ascertained on the basis of the average adjustment granted to General Schedule employees under the applicable provisions of the Federal Pay Comparability Act of 1970.

14. Prior to October 1, 1977 Congress passed P.L. 95-66 (a copy of which is attached hereto as Complaint Exhibit C) providing in pertinent part that any adjustment in judicial salaries (and the salaries of other Executive level federal employees) which would ordinarily go into effect on October 1, 1977, "shall not take effect."

15. On September 28, 1977, the President of the United States issued Executive Order No. 12010, increasing by an average of 7.2%, the rates of pay of General Schedule employees pursuant to the applicable provisions of the Federal Pay Comparability Act of 1970. Because of the prohibition set forth in P.L. 95-66, however, a similar adjustment was not ordered in the rates of pay applicable to Federal Judges, notwithstanding those provisions of the Executive Salary Cost-of-Living Act of 1975 which require that the rates of pay of Judges be adjusted by a percentage equal to the average percentage increase in the General Schedule.

16. This purported temporary suspension or single year repealer of the applicable provisions and terms of the Executive Salary Cost-of-Living Act, as that Act pertains to Federal Judges, has the same effect in law as the prior arbitrary refusal to appropriate recited in Count I above.

17. Since the compensation of plaintiffs and each member of their class prior to July 11, 1977, consisted of a stated salary plus an annual cost-of-living adjustment, P.L. 95-66 and actions taken pursuant thereto have diminished the compensation of plaintiffs and their class, in violation of Article III, Section 1 of the Constitution of the United States and said actions, as applied to plaintiffs and their class, are therefore unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. That this Court find that this action is a proper class action, and that the named parties adequately represent the Class.

B. That upon said findings, this Court order that the action may properly be maintained as a class action as the Class is defined by plaintiffs in this Complaint.

C. That this Court declare that the actions of the defendant as set forth in Count II of this Complaint violate the provisions of Article III, Section 1 which proscribes the diminution of judicial compensation.

D. That P.L. 95-66, as applied to plaintiffs and their class, be declared unconstitutional.

E. That this Court order defendant, United States of America, to pay to plaintiffs individually and to each member of their Class all compensation due for the period October 1, 1977 to the date of judgment, by virtue of the diminution of their compensation in violation of Article III, Section 1 of the Constitution of the United States.

F. That plaintiffs and each member of their class recover whatever interest would have been earned on any compensation wrongfully withheld.

G. That plaintiffs recover the costs of this action and be granted such further relief as this Court deems just and appropriate.

One of the Attorneys for Plaintiffs

KEVIN M. FORDE, LTD.
111 West Washington Street
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726-5015

COMPLAINT EXHIBIT A

BULLETIN NO. 492
Supplement No. 24
Federal Pay Comparability

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

OCTOBER 11, 1976

TO ALL JUDGES AND OTHER OFFICERS AND EMPLOYEES OF THE UNITED STATES COURTS

SUBJECT: FEDERAL PAY COMPARABILITY

Pursuant to the provisions of the Executive Salary Cost of Living Adjustment Act (PL 94–82, 89 Stat. 419) and 5 USC 5301, et. seq., the President on October 1, 1976, issued Executive Order 11941 adjusting judicial salaries and the rates of basic pay and salaries of employees subject to the General Schedule effective on the first day of the first pay period beginning on or after October 1, 1976.

The Judicial salaries are as follows:

Circuit Judges	$46,800*
District Judges	$44,000**
Judges of the Courts of Claims	$46,800*
Judges of the Court of Customs and Patent Appeals	$46,800*
Judges of the Customs Court	$44,000**
Commissioners of the Court of Claims	$39,600***
Referees in Bankruptcy (full-time)	$39,600***

Pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary or a rate which exceeds the rate in effect on September 30, 1976, as follows:

*$44,600 **$42,000 ***$37,800

The statute permits comparability adjustments in the rates of basic pay of certain officers and employees in or under the Judicial Branch of the Government by amounts

not in excess of the amounts of the respective adjustments made by the President in his Executive Order for employees subject to the General Schedule. These increases average 4.83% but vary by grade from a low of 4.24% for grade GS-5 to a high of 11.83% for grade GS-18. The increases for the Judicial Branch, unless otherwise provided for, are effective October 11, 1976.

The salary increases resulting from these upward adjustments in the rates of basic compensation apply generally to the supporting personnel of the Courts of Appeals and District Courts of the United States, the Temporary Emergency Court of Appeals, the U.S. District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court.

COMPLAINT EXHIBIT B

CONGRESSIONAL RECORD—SENATE

is reenacted every year. As the Attorney General said, in 1909:

The repetition and reenactment of the proviso in each of seven successive years were strange and superfluous. Further, in consequence of the repeated previous treatment of the proviso by Congress as depending upon annual repetition and reenactment for its continued operation, the elimination of the proviso when the appropriation for Farmers' Bulletins was first made in 1907 in the sundry civil appropriation act seems to show that it was then the intention of the Congress to have the rule of the proviso no longer operative.

While general and permanent enactments now not infrequently appear in appropriation acts, the presumption concerning a provision in such an act is rather against permanence.

Finally, Mr. President, I have a copy of a letter dated September 21, 1976, from the General Accounting Office

to the chairman of the Post Office and Civil Service Committee of the House of Representatives. This letter indicates that the Comptroller General would not view this proviso as being permanent legislation. I ask unanimous consent that the letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., September 21, 1976,

Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Legislative Committee on Appropriations, U.S. Senate.

DEAR MR. CHAIRMAN: I am enclosing for your information a copy of our letter of today to the Chairman of the House Committee on Post Office and Civil Service concerning the provision adopted by the conferees in the Legislative Appropriation Act of 1977 placing a limitation on the use of appropriations for the payment of compensation.

You will note that, in our opinion, pay increases to General Schedule employees and those linked to a particular rate of the Executive Schedule would not be affected by the appropriation restriction agreed to by the conferees.

I thought it important to bring this to your attention before the conference report is taken up by the Senate and the House of Representatives.

Sincerely yours,

ROBERT F. KELLER
Acting Comptroller of the United States.

Enclosure.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., September 21, 1976.

HON. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives

DEAR MR. CHAIRMAN: This refers to your letter of September 17, 1976, asking 2 questions on the provision in the legislative Branch Appropriation Act 1977 (H.R. 14238) placing a limitation on the use of appropriations for the payment of compensation.

The language in question reads as follows:

"Provided, that none of the funds contained in this Act shall be used to increase salaries of Members of the House of Representatives pursuant to section 204a of Public Law 94–82 in excess of the salary rate in effect on September 30, 1976, for such position or officer. No part of the funds appropriated in this Act or any other Act shall be used to pay the salary of an individual in a position or office referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. 356), including a delegate to the House of Representatives, at a rate which exceeds the salary rate in effect on September 30, 1976, for such position or office except increases submitted by the President pursuant to section 225 of the Federal Salary Act of 1967."

The first question is whether the language "No part of the funds appropriated in this Act or any other Act" has the effect of extending the prohibition on the use of funds to any increase that would occur after the end of fiscal year 1977. You refer in particular to any increase in salaries that could occur under section 204a of Public Law 94–82, on October 1, 1977, or any date subsequent to the end of fiscal year 1977.

Our view is that a provision in an annual appropriation act may not be construed to be permanent legislation unless the language used or the nature of the provision renders it clear that such was the intention of the Congress. When the word "hereafter" or other words indicating futurity are used, or when the provision is of a general

nature bearing no relation to the object of the appropriation, the provision may be construed to be permanent legislation. We find no wording in the appropriation provision here in question which shows a clear intent to enact a permanent restriction. The term "funds appropriated in this Act" clearly relates only to the funds authorized in 1977 fiscal legislative appropriation act for 1977 fiscal year. The term "or any other Act" covers the same subject matter, that is, pay increases for officers and employees. Those words standing alone are not to be considered as words of futurity. We interpret them as a prohibition on the use of funds in the various other appropriation acts for fiscal year 1977 which otherwise would be used for pay increases of officers and employees whose salaries are not paid from funds authorized by the legislative appropriation act. There are other appropriations act provisions that use the words similar to those under consideration here. They are repeated year after year in the appropriation acts, which is indicative that such provisions were not considered by the Congress to be permanent legislation. Therefore, the first question is answered in the negative.

The second question is what effect the prohibition against the use of funds contained in the quoted provision may have on the salary ceiling for positions under the General Schedule or on positions the rate of pay for which is linked to a particular level of the Executive Schedule. You point out that you have no question as to the application of the limitation to positions under the Executive Schedule. You refer however, to those positions the compensation for which is fixed by law "at an annual rate which is equal to the rate for positions" at a particular level of the Executive Schedule.

Also you refer to 5 U.S.C. 5308 which provides that pay may not be paid to employees under the General Schedule, and several other groups subject to the section, "at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

You state that the intention of Mr. Udall was that the freeze would apply to rates of compensation of the Execu-

tive Schedule and the rates of all positions linked to the Executive Scheule by specific levels or ceilings. There were, we note, references in the debates in the Senate and House to the freeze affecting supergrades (GS-16 through GS-18). Nevertheless, the question you raise is whether the language of the provision actually does this, or whether the provision can be interpreted as not freezing the rates for an employee whose position is not under the Executive Schedule but who is entitled to a rate comparable to the rate of a particular level of the Executive Schedule or who is subject to the rate for Level V under 5 U.S.C. 5308.

The language does not suspend or postpone the operation of Public Law 94-82 and it is not therefore a limitation on the rates of pay established thereunder. The language sets a limitation on the use of funds. By its terms it restricts the use of funds otherwise available "to pay the salary of an individual in a position or office referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. 356)." It freezes the salary payments of those individuals at the "salary rate in effect on September 30, 1976, for such position or office."

The provisions of section 225(f) are specific as to the positions covered. There is no language in that section which refers to General Schedule employees or to employees linked to the Executive Schedule except as concerns the appropriate pay relationships between the offices and positions under 225 (f) and the offices and positions in the General Schedule. (To construe mention of General Schedule employees in this context as a "reference" within the meaning of the appropriation limitation in question would be to deny an increase in pay to all General Schedule employees, a result clearly not intended. And it follows that if General Schedule employees are not referred to in section 225(f), the appropriation limitation by its terms does not serve to limit their pay.) Thus, a Presidential pay schedule under 5 U.S.C. 5305 authorizing a pay raise for General Schedule and Executive Schedule employees would entitle the General Schedule employee to a raise not

to exceed the rate specified by the President for level V of the Executive Schedule. Likewise, the pay increase would be due employees authorized to receive "a rate equal to a rate for a particular level of the Executive Schedule." The reason for this, as indicated above, is that the pay limitation in the legislative appropriation act does not affect the legal rate that may be set by the President for Executive Schedule positions under other pay fixing procedures. The restriction is solely on the use of funds to pay salary increases to individuals in the positions or offices specified in section 225(f), Since Executive Schedule positions are specified in section 225(f), individuals in those positions could not receive the pay increase. But the legal rates for Executive Schedule offices and positions would still be the rate set by the President and the use of these rates is not prohibited for other pay purposes. The ceiling in 5 U.S.C. 5308 would, however, restrict payment of increases of General Schedule, and other positions subject to section 5308, to the rate set by the President for level V.

Therefore, the answer to question 2 is that pay increases to General Schedule employees and those linked to a particular rate of the Executive Schedule would not be affected by the appropriation restriction here in question.

I note that the restriction on funds for certain pay raises specifically is made inapplicable to increases that may be submitted by the President under section 225 of the Federal Salary Act of 1967.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

ELIMINATION OF THE 1-PERCENT KICKER

Mr. HOLLINGS. I am pleased to report that the House has receded and concurred in the amendment of the Senate eliminating the so-called 1-percent kicker for cost-of-living adjustments in the annuities of Federal and military retirees. The conferees also agreed to a new method of computing such adjustments semiannually on the basis of the actual cost of living, with the computation to be made each

January and July. Adjustments will be made effective as of March and September with payments to be made in the checks made to the annuitants in April and October. The GAO has shown that the 1-percent kicker has led to annuity increases to Federal retirees of 71 percent while the cost of living has risen by only 56 percent. By substituting this new procedure for the current system, we will assure our Federal annuitants full protection to any increases in the cost of living, be it ½ percent, 2 percent, or 3 percent or more; but at the same time saving the Treasury some $3 billion over the next 5 years according to both the Congressional Budget Office and the Office of Management and Budget.

Mr. President, a distinguished former Member of Congress, the Honorable Hastings Keith, has been in the forefront of the battle to repeal the kicker. I was happy to learn that Mr. Keith is making a splendid recovery from his recent open heart surgery. On August 25, 1976, Mr. Keith sent a letter to the Wall Street Journal that completely analyzes this issue. Mr. Keith indicates that for the existing 2.3 million employees and their surviving spouses, the total future cost of the 1-percent kicker alone—above the cost of living—would be about $150 billion, assuming an annual inflation rate of only 6 percent. I ask unanimous consent to have Mr. Keith's article printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LETTER FROM A PENSIONER

(By Hastings Keith)

Your editorial of August 10, "Washington's Generous Pensions" was on target—but you are shooting at a fast-moving gravy train that may already be out of range.

I should, as one of those federal pensioners (civil service, military, congressional) be enjoying the ride, but instead I am sickened by the skyrocketing nature of the benefits and costs—benefits and costs which in the long run are probably more generous and will take propor-

tionately more of the taxpayers' dollars than do the much critized pension plans of New York City and my home state of Massachusetts.

Your editorial was correct in stating that the "kicker" that boosts federal pensions even faster than increases in the costs of living is only a "tiny part" of the total pension problem. But perhaps a little further examination as to how big the "tiny part" is would encourage your readers nationwide to do something about it—like calling their Congressman.

To give you a first-hand view of how the kicker works, consider my pension, which on retirement after 14 years in the Congress, five years and ten months in the military and about three months of Civil Service was, at age 57, $1,560 a month. Thirty-five months later it reached a $2,206 per month, an increase of 41.5% in less than three years time. Stated another way, the increase was almost 50% more than the cost of living, which had gone up 28% during that same 35-month period.

(The 1% add-on or "kicker" as it is sometimes called, was intended to compensate for the time lag that occurs between the actual cost-of-living increase and the effective date of the adjustment. So 1% is added to the cost-of-living formula each time an increase takes place. The problem arises—and overcompensation occurs—because Congress apparently did not realize that the 1% becomes a permanent part of the pension compounding the benefits.)

ALBERT EINSTEIN'S 'DISCOVERY'

Even the relatively sophisticated readers of the Journal will have a difficult time (as do the members of Congress) comprehending how any pension could have compounded so fast. All I can do is remind them of the truth of Albert Einstein's alleged response when he was asked, "What do you, Mr. Einstein, consider to be man's greatest invention?" He didn't reply the wheel or the lever. He is reported to have said, "Compound interest."

Most of us think of interest as compounding annually, but in the case of the federal pension, under its formula, it

compounds—depending on the rate of inflation—as often as twice a year. Hence, over the lifetime of the government's existing 2.3 million employees and their surviving spouses (who will receive 55% of a deceased annuitant's pension) the total future costs of the 1% kicker alone—above the cost of living and all paid for from general revenues—would be about $150 billion, assuming an annual inflation rate of only 6%.

It is significant that these long-range estimates of future costs were not found in the debate—either at the time the 1% add-on to the pension formula was enacted in 1969 or during the debate on August 2 this year when the add-on's elimination was being considered. In 1969 the debate dealt in terms of millions and in a time frame of a year or two. The projected costs in the debate earlier this month were in terms of $2 billion or $3 billion over a 5-year period.

The fact is that if the 1% kicker is only prospectively removed—as called for in the Henderson bill (HR-350)—there will still be a further $40 billion in benefits added to the pensions of federal pensioners and their surviving spouses. All of this additional add-on will not only be above the cost of living, but it will all be paid from general revenues—all done with borrowed money—and all on top of the most generous pension plan in existence.

Rep. Paul Findley (R., Ill.) has proposed an amendment to the Henderson bill which would, in effect, freeze the present annuities of the existing pensioners. His amendment would allow them to keep the more than $1 billion above the cost of living that has already been paid to them; furthermore, it would allow them to continue to draw their pensions at the current rate and, depending upon the future rate of inflation, they could get another $2 billion during the catch-up period. From then on, federal pensions would stay abreast of the cost of living. Over the next 20 to 35 years. Findley's amendment would save—in addition to the savings in the Henderson bill—some $38 billion. (This figure is based on statistics furnished me by the former chief actuary of the Social Security Adminstration, Robert Myers. His computations were confirmed by specialists in the Library of Congress.)

It must be noted that without the acceptance of the Findley amendment, the $38 billion that would be added to existing pensions will be entirely financed from general revenues; none of it will come from employe contributions. Most importantly, it stands in sharp contrast to the fate of the rest of the American workforce which does not benefit from such a program. Few workers enjoy a cost-of-living formula in their pensions; none of them make a "profit" on inflation as do those who have the 1% add-on.

Although the proposed reforms were defeated on August 2, the situation is expected to get a fresh airing, possibly today, when the House is scheduled to take up a bill on pensions for federal judges. The restriction on pension add-ons is expected to be introduced under an open rule permiting amendments.

It would be impossible for Congress to tackle all the points made in your editorial. The current climate in Congress does not encourage any broad-range attack on such matters as early retirement, dual compensation (double-dipping), "outrageous" disability provisions, methods of funding and the matter of integration of federal pensions with Social Security.

The most expensive pension plan is that of the military—it is also the most worthy of reform. It does not recognize that the roles of vast numbers of the military are only remotely related to combat. Only in a very small sector of the vast defense establishment (namely, combat elements of combat command) can the case be made for the lush benefits that now return retirees to the private sector at about age 42 with pensions averaging more than $700 a month. Their pensions increase under the same

COMPLAINT EXHIBIT C

Public Law 95-66
95th Congress

An Act

July 11, 1977
[S. 964]

To provide that the salaries of certain positions and individuals which were increased as a result of the operation of the Federal Salary Act of 1967 shall not be increased by the first comparability pay adjustment occurring after the date of the enactment of this Act.

Federal comparability pay adjustments
Temporary prohibition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, the first adjustment which, but for this Act, would be made after the date of enactment of this Act under the following provisions of law in the salary or rate of pay positions or individuals to which such provisions apply, shall not take effect:

3 USC 104 note.

(1) the second sentence of section 104 of title 3, United States Code, relating to comparability adjustments in the salary of the Vice President of the United States;

2 USC 31 note.

(2) paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C 31), relating to comparability adjustments in the annual rate of pay of Members of Congress;

28 USC 461 note.

(3) section 461 of title 28, United States Code, relating to comparability adjustments in the salary and rate of pay of justices, judges, commissioners, and referees; and

5 USC 5318 note.

(4) section 5318 of title 5, United States Code, relating to comparability adjustments in the annual rate of pay for positions in the Executive Schedule.

Approved July 11, 1977.

[CAPTION OMITTED]

ANSWER

The United States of America, by its undersigned attorneys, hereby answers the allegations of plaintiffs' complaint as follows:

FIRST DEFENSE

The Court is without jurisdiction over the subject matter of this complaint.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

Responding specifically to the numbered paragraphs of the complaint, defendant admits, denies, and alleges as follows:

Count I

1. Denies the first and second sentence. Admits the third sentence.

2–4. Admits.

5–10. These paragraphs contain conclusions of law to which no response is required, though to the extent a response may be deemed required, denies.

11. Admits.

12. This paragraph contains conclusions of law to which no response is required, though to the extent that a response may be deemed required, denies and refers the Court to 5 U.S.C. § 5318, 28 U.S.C. § 461 and 5 U.S.C. § 5305 for a complete statement of their contents.

13. Admits.

14–19. These paragraphs contain conclusions of law to which no response is required, though to the extent that a response may be deemed required, denies.

Count II

1–10. Defendant incorporates by reference his answers to paragraphs 1–10 of Count I as answers to the allegations in these paragraphs.

11. Admits.

12. These paragraphs contain conclusions of law to which no response is required, though to the extent that a response may be deemed required, denies and refers the Court to 5 U.S.C. § 5318, 28 U.S.C. § 461 and 5 U.S.C. § 5305 for a complete statement of their contents.

13. Denies.

14. Denies and refers the Court to Pub. L. 95–66 for a complete statement of its contents.

15. Admits the first sentence. The second sentence contains conclusions of law to which no response is required,

though to the extent that a response may be deemed required, denies.

16–17. These paragraphs contain conclusions of law to which no response is required, though to the extent a response may be deemed required, denies.

Defendant denies all allegations not specifically responded to above.

WHEREFORE, defendant prays that plaintiffs' complaint be dismissed and that defendant have its costs.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

ANTHONY J. STEINMEYER

LAWRENCE J. JENSEN
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Washington, D.C. 20530
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[CAPTION OMITTED]

PLAINTIFFS' MOTION FOR CLASS DETERMINATION

Now come Plaintiffs by their counsel and, pursuant to Rule 23, F.R.Civ.P., respectfully move this Honorable Court to enter an order determining that this action and both Counts thereof may properly be maintained as a class action pursuant to Rule 23, F.R.Civ.P.

CLASS DEFINED

In support to this Motion Plaintiffs state that the classes on behalf of which this action is sought to be maintained may be described as follows.

Count I

The class in Count I consists of all persons who served as Judges of the United States pursuant to Article III of the Constitution of the United States during part or all of the period commencing October 1, 1976 and continuing to March 1, 1977.

Count II

The class in Count II consists of all persons who served as Judges of the United States pursuant to Article III of the Constitution of the United States prior to July 11, 1977 and who continued to hold said office subsequent to commencement of the first pay period following October 1, 1977.

No judge appointed after July 11, 1977, is a member of either class and no claim is asserted on behalf of any such person. While there is considerable overlap in the two classes, in that members of the class in Count I are also members of the class in Count II, the classes are distant with distinct claims.

THE BASIC PREREQUISITES

In further support of this Motion, Plaintiffs allege with respect to the class defined in each count of the Complaint:

1. The class which Plaintiffs seek to represent is so numerous that joinder of all members is impracticable. In each Count the proposed class consists of approximately 600 persons serving in United States Courts throughout the United States.

2. There are questions of law and fact common to the class. Indeed, every issue of each Count is common and identical as to each and every class member. All issues presented concern the legal effects of certain actions by the Congress of the United States and the question of whether such actions violated Article III Section 1 of the Constitution, which provides that Judges of the United States shall receive a compensation, "which shall not be diminished during their Continuance in Office."

There are no individual issues in the case.

3. The claims of the representative parties are typical of the claims of the members of the class. As noted above (in paragraph 2), the claims of Plaintiffs are not only typical but identical to the claims of each and every member of the class. Every named representative party is a member of the class in each Count and each asserts the same claim as all other class members.

4. The representative parties will fairly and adequately represent the class. The named plaintiffs are 13 distinguished members of the United States Courts; they assert the same claims on their own behalf as those asserted on behalf of the class. Their counsel are experienced in the litigation of cases of this nature.

Plaintiffs further state, pursuant to subparagraph (b) (2) of Rule 23, that the party opposing the class in each Court [the United States] has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Plaintiffs respectfully submit with respect to this prerequisite that it is apparent from the Complaint that the party opposing the class in each Count [the United States] has clearly acted on grounds generally applicable to the class. Both Counts contend that the actions of the United States violated the rights of each and every class member provided for under Article III Section 1 of the Constitution, which provides that they, as Judges of the United States, receive "Compensation which shall not be diminished during their Continuance in Office."

With specific reference to the claims asserted on behalf of the class in Count I, the passage of P.L. 94–440 (Count I par. 15) prohibiting payment of the full salary to which Judges were entitled by law, is generally applicable to the class. With reference to the claims asserted in Count II, the United States has acted in a manner generally applicable to the class by the passage of P.L. 95–66, referred to at Count II paragraphs 14–17, providing in pertinent part that any adjustment in judicial salaries which would have

taken effect on July 11, 1977, shall not be paid. In short, the United States has refused to act on grounds generally applicable to each member of each class in its refusal to pay the full salaries of Federal Judges, as alleged in both Counts of the Complaint.

Based on the claims of the class, the most appropriate relief is declaratory relief with respect to each class as a whole. The Prayer of each Count of the Complaint seeks first and foremost a declaration that the actions of the United States alleged therein violate the provisions of Article III, Section 1, which proscribes the diminution of judicial compensation.

WHEREFORE, Plaintiffs respectfully submit that the motion to maintain this action, and both Counts thereof, as a class action pursuant to Rule 23 (b) (2), F.R.Civ.P. should be granted.

Respectfully submitted,

One of the Attorneys for Plaintiffs

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RICHARD J. PRENDERGAST
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726-5015

[CAPTION OMITTED]

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR CLASS DETERMINATION

Defendant does not oppose the plaintiffs' Motion for Class Determination. Defendant does, however, urge the Court in the exercise of its discretion under Rule 23(d)(2), Federal Rules of Civil Procedure, to require that notice of this suit be given to the approximately 600 judges in each of the proposed classes that provides them with an oppor-

tunity to request exclusion from either or both of the classes by a specified date.

This suit involves sensitive constitutional questions about the separation of powers as between the Congress and the Judiciary in the matter of judicial salaries. It follows by only a few months another suit brought by some of the same plaintiffs and others involving similar questions on different facts. *Atkins* v. *United States*, 556 F.2d 1028 (Ct. Cl. 1976), *cert. den.*, 45 U.S.L.W. 3436 (January 10, 1978). In *Atkins*, which was brought in the Court of Claims where no class actions are allowed, most of the federal judges declined to join with the plaintiffs in bringing the suit. Even fewer participated in seeking Supreme Court review. Defendant submits that this is indicative of the fact that many of these federal judges were unsympathetic to the claims being made and did not want to be associated with them. The same may well be true here. Where these constitutional issues are being litigated and where the members of the proposed class are uniquely qualified to judge for themselves the merits of the issues, defendant suggests that it would be appropriate for the Court under Rule 23(d)(2) to require that notice be given to the proposed class members informing them of the suit and of their privilege to request exclusion from the class by a specified date. See *Eisen* v. *Carlisle & Jacquelin*, 391 F.2d 555 (2nd Cir. 1968).

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

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Telephone: (202) 739-3383
Attorneys for Defendant

[CAPTION OMITTED]

MOTION FOR JUDGMENT ON THE PLEADINGS

The United States, by its undersigned attorneys, hereby moves the Court for judgment on the pleadings in its favor pursuant to Rule 12(c), Federal Rules of Civil Procedure.

A statement of points and authorities in support of this motion is attached.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

ANTHONY J. STEINMEYER

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Telephone: (202) 739-3383
Attorneys for Defendant

[CAPTION OMITTED]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Now Come Plaintiffs by their counsel and, pursuant to Rule 56, F.R.Civ.Proc., respectfully move that this Court enter summary judgment for plaintiffs and against defendant on both Counts of the Complaint.

In support of this Motion plaintiffs state that the pleadings, including the Complaint and the exhibits incorporated therein, the defendant's Answer and the affidavit to be submitted by plaintiffs with their Memorandum of Law, all show that there are no genuine issues of any material facts and plaintiffs, and every member of their class, are entitled to judgment as a matter of law.

In further support of this Motion plaintiffs state that the damages suffered by each plaintiff and each member of the

class is readily ascertainable by a simple mathematical computation and, assuming liability is imposed, there is no dispute as to the amount of or the method of computation of damages.

Respectfully submitted,

_____

One of the Attorneys for Plaintiffs

KEVIN M. FORDE
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726-5015

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ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

AFFIDAVIT

I, Joseph A. Leach, Chief of the Payroll Section, Financial Management Division, hereby state that the attached document captioned as Transmittal 18 to Volume III, Guide to Judiciary Policies and Procedures, is a true and accurate statement of the policies relating to payroll and salary procedures as administered by the Administrative Office of the United States Courts as of this time:

I further certify that so much of Title IX of this document as provides:

> "Judges, referees in bankruptcy and United States magistrates are paid by checks dated the first of each month (covering salary for the month just closed)"

is a policy which was also in effect in the period from and before September 1976 to the present.

For judges of the United States courts, the pay period commences on the first day of each month, and the Oc-

tober 1, 1976, adjustment was therefore effective on October 1, 1976.

The statement in Bulletin No. 492, Supplement No. 24, dated October 11, 1976, that "[T]he increases for the judicial branch, unless otherwise provided for, are effective October 11, 1976," did not relate to the pay increases for judges, but rather concerned the pay increases for non-judicial employees of the judicial branch, whose next pay period following October 1, 1976, began October 11, 1976. As respects federal judges, the above quoted provision of the Guide to Judiciary Policies and Procedures provided otherwise in determining the date of commencement of the applicable pay period. Accordingly, the first pay period for judges on or after October 1, 1976, began on October 1, 1976.

I certify under penalty of perjury that the foregoing is true and correct. Executed on July 5, 1978.

JOSEPH A. LEACH

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

MAY 5, 1978

TRANSMITTAL 18 (Volume III) FOR GUIDE TO JUDICIARY POLICIES AND PROCEDURES

To : Federal Judges
Circuit Executives
Clerks of Court

From : William E. Foley

Subject : Guide to Judiciary Policies and Procedures, Volume III, Judges' Manual

Attached is Title XI, Payroll, Retirement and Other Benefits, to Volume III, Judges' Manual. Revised

Exhibits XIA and XIB were provided as a part of Transmittal 1 (Volume III) dated June 1, 1977. Exhibit XIB has again been revised and is attached. Also attached is an additional Exhibit XIC, List of the Cities with which the Secretary of the Treasury has Entered into an Agreement for Withholding City Income and Employment Taxes.

New material being presented is as follows:

Page XI-3 —City or County Income or Employment Taxes.

Page XI-4 —Table covering retirement benefits for territorial judges.

Page XI-5 —Federal Employees' Group Life Insurance: current amount of coverage for circuit and district judges.

Page XI-6 —Third paragraph: requirement for stipulating a trustee for a revocable life insurance trust on SF-54.

Page XI-8 —Allotments of Pay for Savings Accounts: restriction removed to cover officers outside the continental United States.

Page XI-8 —Statement of Earnings.

The attached material replaces that information previously published in the Guide to the Administrative Organization of the United States Courts. Other titles to the Guide are now in the process of being revised and will follow soon, all to be issued as a part of Volume III, Judges' Manual.

FILING INSTRUCTIONS.

The attached pages should be filed in back of the tab titled Title XI, Payroll, Retirement and Other Benefits. Remove Exhibit XIB dated June 1, 1977.

This transmittal may be discarded after it has been logged and the attached material filed.

Barbara Peyton of the Administrative Services Division (FTS 633-6057) may be consulted for specific questions on the mechanics of the system. We continue to encourage your comment on the material that you are receiving.

Title XI. Payroll, Retirement and Other Benefits

Salary payrolls for the Federal judges and their immediate staffs currently are being prepared by the Administrative Office. The clerk of the district court is the Payroll Certifying Officer for his staff as well as all circuit and district judges and their staffs whose official headquarters are located within his district except that the clerk of the court of appeals is the Payroll Certifying Officer for circuit judges and their staffs stationed in the same city as the circuit clerk's office. Judges, referees in bankruptcy and U.S. magistrates are paid by checks dated the first of each month (covering salary for the month just closed). All other court employees are paid every two weeks but on the Friday following the close of a biweekly pay period. The salary checks are issued by the Treasury Department in Washington, D. C. A judge may have his check delivered to his office, home address or directly to a bank. The checks for a judge's staff will be mailed to the Payroll Certifying Officer if located in the same city, directly to the employee's office address if stationed elsewhere, or to a bank.

Any officer or employee may elect to receive his full net pay on a regular recurring basis in the form of a check drawn in favor of a financial organization of his choice for credit to his account in lieu of a check drawn to his order. The election may be effected by securing SF 1189, Request by Employee for Payment of Salaries or Wages by Credit to Account at a Financial Organization, from the Payroll Certifying Officer for completion by the employee and the financial organization concerned. The original of the form should be returned to the Payroll Certifying Officer and a copy may be retained by the employee and the financial organization. A cancellation specifying the termination date may be accomplished by memorandum to the Payroll Certifying Officer for transmittal to the Administrative Office.

Judge's salaries are computed on the basis of a 30-day month, so that a judge entering on duty during a given month will be paid, for that month, his regular monthly salary less one-thirtieth of that amount for each day of the

month which had elapsed prior to his entry on duty (5 U.S.C. 5505). In accordance with decision of the Comptroller General of the U.S. B–11533 (20 CG 90) the salary of a judge is effective currently with his first affirmative action accepting his commission—normally this is the taking of the oath of office. Compensation will be computed for the full day on which the oath of office is taken unless it is the thirty-first day of the month.

A salary table of judges follows as Exhibit XI-A. A table of the grades and annual salary rates under the Judiciary Salary Plan is included as Exhibit XI–B. The rates, incidentally, are identical to those for the comparable grades under the General Schedule of the Classification Act of 1949, as amended.

Judges should give the clerk of the court advance notice of the date their employees will enter on duty so that the clerk may be prepared to furnish employees with information concerning such matters as life insurance, health benefits, and tax forms.

Federal Taxes. The Payroll Certifying Officer will furnish Form W–4, Employee's Withholding Allowance Certificate. Line 2 of the Federal form may be used to request additional withholding per pay period in multiples of $5.

State Taxes. The Secretary of the Treasury has entered into an agreement with the following states to withhold State taxes from the compensation of Federal employees:

Alabama; Alaska; Arizona; Arkansas; California; Colorado; Delaware; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; New Jersey; New Mexico; New York; North Carolina; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; Utah; Vermont; Virginia; West Virginia; and, Wisconsin.

The Payroll Certifying Officer will furnish any required state tax exemption certificate. Additional state tax withholding may be authorized in multiples of $1 per pay period. Judicial officers and employees in the District of Columbia may authorize District of Columbia or state tax

deductions through payroll withholding by filing a special form available from the clerk of court.

City or County Income or Employment Taxes. Pursuant to the provisions of 5 U.S.C. 5520, withholding for city or county income or employment taxes is required when the Secretary of the Treasury has entered into an agreement with a qualified taxing authority, if the Federal officer or employee is subject to the tax, and his official headquarters is within the political boundaries of the city or county. A list of the participating cities and the type of tax is included as exhibit XIC. The Payroll Certifying Officer will furnish TFS Form 7311, Employee's Withholding Certificate for City Taxes; this form must be completed if city taxes are required to be withheld from salary. At the present time, the only county tax that must be withheld is the Occupational License Tax for Jefferson County, Kentucky; since this tax is the same that is withheld for the City of Louisville, the county tax would only apply if the official headquarters is a city other than Louisville but in Jefferson County.

Retirement Systems.

Federal Judicial Retirement. A judge who is appointed to hold office during good behavior is excluded from coverage under the Civil Service Retirement or Social Security Systems because he is subject to the Federal Judicial Retirement as set forth in 28 U.S.C. 371, 372. It is a noncontributory system and only Federal Judicial service is creditable. The requirements are set forth in the following table:

Type of Retirement	Minimum Age	Minimum Years of Service	Compensation
Sec. 371(a) resignation	70	10	Salary at time of resignation
Sec. 371(b) retirement	70	10	Salary of the office
Sec. 371(b) retirement	65	15	Salary of the office
Sec. 372(a) disability	none	10	Salary of the office
Sec. 372(a) disability	none	less than 10	One-half of the salary of office

No provision for deferred compensation, i.e., both the minimum age and years of service requirements must be met at the time of resignation or retirement.

A territorial judge appointed for a term of years is subject to the provisions of 28 U.S.C. 373. The following table would apply for benefits payable to separated territorial judges:

Type of Retirement	Minimum Age	Minimum Years of Service	Compensation[1]
Resignation	70	10	Salary at time of separation
Resignation	65	15	Salary at time of separation
Removed due to disability, or fails of reappointment	65[2]	16	Salary at time of separation
Removed due to disability or fails of reappointment	65[2]	10	Proportion of salary which years of service bear to 16.

The Internal Revenue Service has ruled that a judge who retires because of disability under 28 U.S.C. 372(a), may take advantage of the sick pay exclusion as provided by 105(d) of the Internal Revenue Code (26 U.S.C. 105 (d). The IRS indicated that the "sick pay" exclusion could be taken in that the retirement was caused by declining health which rendered the judge permanently disabled and that the statute under which he retired (28 U.S.C. 372) is a wage continuation plan within the purview of 105(d). On the basis of information submitted in this case, the IRS concluded that retirement salary was not subject to a total exclusion under 104(a)(1), of the Internal Revenue Code because the judge's retirement "was not due to an occupational injury or illness arising out of and in the course of his work." The IRS left open the question of when "mandatory retirement age" occurs in the case of a federal

---

[1] Subject to same cost-of-living adjustment granted under Civil Service Retirement System provided that total amount payable does not exceed 95% of a United States District Judge's salary.

[2] Payable upon relinquishment of office if beyond age 65 or upon attainment of age 65.

judge under 105(d) and the exclusion is no longer available to the taxpayer. Copies of the opinion may be obtained from the Office of the General Counsel, Administrative Office of the U.S. Courts.

Judicial Survivors' Annuities System. A complete description of the Judicial Survivors' Annuities System providing annuities for the spouse and surviving dependent children of a federal judge may be found in Title IX of this volume.

Civil Service Retirement. A judge's personal staff is subject to the Civil Service Retirement Act unless excluded by law or regulation due to the nature of the appointment. A certificate under the Civil Service Retirement System explaining the benefits will be transmitted with the personnel notice covering the appointment. If eligible, coverage is automatic but the deductions are either returned in a lump sum upon separation from Government service or through annuity benefits. An employee who is not subject to another Federal retirement system and is excluded from coverage under the Civil Service Retirement System by the nature of the appointment, would be subject to the Social Security System.

Federal Employees' Group Life Insurance. Each judge and his personal staff are eligible to participate in the Federal Employees' Group Life Insurance Program consisting of regular and optional insurance. Unless the insurance was waived on or after 2/14/68, during prior Federal service, coverage under the regulation insurance is automatic upon entrance on duty. General information about the program is set forth in SF 176A, Federal Employees' Group Life Insurance Program. If a judge is receiving the full statutory salary, the amount of regular insurance is presently $60,000 for a circuit judge and $57,000 for a district judge.

Each officer and employee (unless by the nature of appointment is excluded by law or regulation from participating) will be furnished a SF 176, Election, Declination, or Waiver of Life Insurance Coverage, by the Payroll Certifying Officer to be executed and returned in duplicate

within 31 days after entrance on duty. The form must be executed unless one has been filed during prior Federal employment, which would remain in effect. It should be noted that if the insurance is waived, coverage cannot be obtained until after one year from the date of the waiver, provided the officer or employee is under age 50 at the time application is made to cancel the waiver, and satisfactory evidence of insurability can be met.

Deductions for the regular insurance must be made from the first salary payment unless the SF 176, in which coverage is waived, is received by the Payroll Certifying Officer on or before the last day of the first pay period. The optional insurance is in the amount of $10,000 and coverage would be determined by the date the SF 176 is received by the Payroll Certifying Officer; however, if optional insurance was elected during prior Federal employment, coverage would be effective with entrance on duty.

After the SF 176 is filed with the Payroll Certifying Officer, the insured will receive a certificate for the regular insurance, as well as one for optional insurance, if elected. A SF 54, Designation of Beneficiary, Federal Employees' Group Life Insurance Act (obtained from the Payroll Certifying Officer), should be executed and filed in duplicate with the Administrative Office, only if the order of precedence as stated on page 5 of the SF 176A is unsatisfactory.

A designation of beneficiary under the life insurance program is restricted to the types of examples as shown on the reverse side of Standard Form 54 with one exception. A trustee for a revocable life insurance trust may be designated but the following stipulation must be shown under the designation of beneficiary or on an attachment to the form if there is insufficient room: "The Office of Federal Employees' Group Life Insurance shall not be responsible for application or disposition of such insurance proceeds by said Trustee and the receipt of said Trustee shall be full discharge of the liability of said Office under the Federal Employees' Group Life Insurance Act."

The statements of page 6 of the SF 176A, referring to coverage after retirement from Government Service, DO

NOT APPLY TO A JUDGE unless he resigns but compensation continues under 28 U.S.C. 371(a) or 373. The CSC ruled that the judges who "retire" under the provisions of 28 U.S.C. 371 (b) or 372 are not considered as "retired employees" and remain officers of the U.S. within the meaning of the insurance act. Therefore, there is NO REDUCTION of 2% a month in the amount of regular or optional insurance coverage for a judge because of age or retirement and the premium will continue to be deducted after retirement under 28 U.S.C. 371(b) or 372. Should a judge retire under 28 U.S.C. 372 and receive compensation less than the current statutory salary of the office, the amount of the regular insurance coverage would be based on the lower compensation. A judge also retains the accidental death and dismemberment insurance coverage after retirement under 28 U.S.C. 371(b) or 372.

Federal Employees Health Benefits Program. A judge and his personal staff (unless excluded by law or regulation, based on the nature of appointment) may elect to participate in the Federal Employees Health Benefits Program offering protection against the cost of illness or accident. A SF 2809, Health Benefits Registration Form, either electing coverage or non-enrollment, must be executed and filed with the Payroll Certifying Officer within 31 days from entrance on duty. There are several plans available and brochures describing each plan available in the area, as well as the cost, will be furnished by the Payroll Certifying Officer with the Health Benefits Registration Form. A general description of the program is contained in SF 2809A, The Federal Employees Health Benefits Program. BRI 31-210, Information to Consider in Choosing a Health Plan, may be secured from the Payroll Certifying Officer. The effective date of coverage is stated on page 10 of SF 2809A (see page 11, Continuation of Enrollment, if transferring from other Federal service).

Voluntary Allotments.

Combined Federal Campaign. Payroll withholding may be made for charitable contributions to the Combined

Federal Campaign in those areas where a federal organization has been established. An authorization form may be secured from the Payroll Certifying Officer to be executed and returned to him. Allotters must make a single allotment of an equal amount to be deducted each pay period during the year, with a minimum of $1 monthly or 50¢ biweekly, to commence with the first pay period beginning in January and ending with the last pay period which begins in December. Allotments will be discontinued automatically on expiration of the one-year withholding period or may be revoked by request, in writing, to the Payroll Certifying Officer.

United States Savings Bonds. The Judiciary is participating in the Voluntary Savings Plan for purchase of U.S. Savings Bonds through payroll withholding. The minimum allotment for bond purchases is $6.25 per monthly pay period and $3.75 biweekly pay period. The bond authorization should be in aliquot parts (amounts which divide equally into the whole, i.e., without a remainder) of the total purchase price. SF 1192, U.S. Savings Bond Authorization for Purchase and Request for Change, may be secured from the Payroll Certifying Officer and returned to him after execution. Delivery of the bonds will be by mail.

Allotments of Pay for Savings Accounts. Any officer or employee may authorize an allotment of pay for a savings account provided: (a) the allotment is a fixed amount in whole dollars (no cents) to be deducted in each successive payroll, and (b) not more than two such allotments for any one officer or employee shall be in effect at any time. A savings account is a single or joint account for the purchase of shares (other than shares of stock) or for the deposit of savings in any financial organization, the title of which account includes the name of the authorizing employee. A financial organization means any bank, savings bank, savings and loan association or similar institution, or federal or state chartered credit union, except any foreign financial organization. SF 1198, Request by Employee for Allotment of Pay for Credit to Savings Account with a Fi-

nancial Organization, may be obtained from the Payroll Certifying Officer. The original should be returned to the Payroll Certifying Officer and a copy retained by the employee and the financial organization. The executed SF 1198 serves as the required written authorization and evidence (by endorsement thereon by the financial organization), that the financial organization is willing to act in this respect as agent and to accept at its expense the related service charge. The actual receipt of the savings allotment check by the financial organization may be three or four business days after the payroll pay date. A cancellation, specifying the termination date, may be accomplished by memorandum to the Payroll Certifying Officer.

Statement of Earnings. A Statement of Earnings is issued each pay period setting forth the annual salary rate, ending date of the pay period, tax exemptions being claimed, current deductions and year-to-date totals. The form will be distributed by the Payroll Certifying Officer. It is suggested that each officer and employee review the data on the form to determine that the proper deductions are being made. The Statement should be retained until one is received for the subsequent pay period since any difference in the data shown on the two forms would explain the reason for any change in the next check. The final Statement of Earnings for the year should be retained to determine the total yearly health benefits withholdings if deductions are itemized on the individual tax return.

Other Benefits.

Compensation for Work Injuries. Officers and employees of the Judiciary are also subject to benefits of the Federal employees compensation law (5 U.S.C. 8101) for an injury sustained while in the performance of duty; if the injury is fatal, supervisorship benefits may be payable as well as certain burial expenses. Every occupational injury must be reported to an immediate superior officer without delay; the appropriate claim forms may be obtained from the Personnel Division of the Administrative Office.

Unemployment Compensation. Like other Federal employees, the Judiciary is subject to the benefits of unemployment compensation for Federal employees (5 U.S.C. 8501). The program provides unemployment benefits for civilian Federal employees similar to those provided by state unemployment insurance laws to workers in private industry. SF 8, Notice to Federal Employee about Unemployment Compensation, covering the procedure to be followed in applying for benefits will be furnished by the Payroll Certifying Officer to the officer or employee when separated from the service, or in a non-pay status for seven calendar days or more.

Exhibit XI-B
(Title 28 - Judiciary)

THE JUDICIARY

SCHEDULE OF ANNUAL SALARY RATES FOR EMPLOYEES
SERVING IN FULL-TIME GRADED POSITIONS
(Effective October 10, 1977)

JSP* GRADE	ANNUAL RATES AND STEPS										AMOUNT OF WITHIN-GRADE INCREASE
	1	2	3	4	5	6	7	8	9	10	
1	$ 6,219	$ 6,426	$ 6,633	$ 6,840	$ 7,047	$ 7,254	$ 7,461	$ 7,668	$ 7,875	$ 8,082	$ 207
2	7,035	7,270	7,505	7,740	7,975	8,210	8,445	8,680	8,915	9,150	235
3	7,930	8,194	8,458	8,722	8,986	9,250	9,514	9,778	10,042	10,306	264
4	8,902	9,199	9,496	9,793	10,090	10,387	10,684	10,981	11,278	11,575	297
5	9,959	10,291	10,623	10,955	11,287	11,619	11,951	12,283	12,615	12,947	332
6	11,101	11,471	11,841	12,211	12,581	12,951	13,321	13,691	14,061	14,431	370
7	12,336	12,747	13,158	13,569	13,980	14,391	14,802	15,213	15,624	16,035	411
8	13,662	14,117	14,572	15,027	15,482	15,937	16,392	16,847	17,302	17,757	455
9	15,090	15,593	16,096	16,5	17,102	17,605	18,108	18,611	19,114	19,617	503
10	16,618	17,172	17,726	18,280	18,834	19,388	19,942	20,496	21,050	21,604	554
11	18,258	18,867	19,476	20,085	20,694	21,303	21,912	22,521	23,130	23,739	609
12	21,883	22,612	23,341	24,070	24,799	25,528	26,257	26,986	27,715	28,444	729
13	26,022	26,889	27,756	28,623	29,490	30,357	31,224	32,091	32,958	33,825	867
14	30,750	31,775	32,800	33,825	34,850	35,875	36,900	37,925	38,950	39,975	1,025
15	36,171	37,377	38,583	39,789	40,995	42,201	43,407	44,613	45,819	47,025	1,206

*Judiciary Salary Plan (Equivalent to GS grades)

LIST OF CITIES WITH WHICH THE SECRETARY OF THE TREASURY HAS ENTERED INTO AN AGREEMENT FOR WITHHOLDING CITY INCOME AND EMPLOYMENT TAXES

City	Type of Tax
Akron, Ohio	City Income Tax
Battle Creek, Mich.	City Income Tax
Birmingham, Ala.	Occupational License Tax
Brookeville, Ohio	City Income Tax
Caln Township, Pa.	(Earned Income Tax and (Occupational Privilege Tax
Canton, Ohio	City Income Tax
Cincinnati, Ohio	City Income Tax
Cleveland, Ohio	Municipal Income Tax
Columbus, Ohio	City Income Tax
Covington, Ky	City Earnings Tax
Dayton, Ohio	City Income Tax
Denver, Colo.	Occupational Privilege Tax
Detroit, Mich.	City Income Tax
Erie, Pa.	(City Income Tax and (Occupational Privilege Tax
Fairview Township, Pa.	(Earned Income Tax and (Occupation Privilege Tax
Flint, Mich.	City Income Tax
Grand Rapids, Mich.	City Income Tax
Hampden Township, Pa.	(Earned Income Tax and (Occupational Privilege Tax
Harrisburg, Pa.	(Earned Income Tax and (Occupational Privilege Tax
Heath, Ohio	City Income Tax
Kansas City, Mo.	Earnings and Profits Tax
Kettering, Ohio	City Income Tax
Lancaster, Pa.	(Earned Income Tax and (Occupational Privilege Tax
Lansing, Mich.	City Income Tax
Lexington, Ky.	Occupational License Fee
Louisville, Ky.	Occupational License Tax
Mansfield, Ohio	City Income Tax
New York, N.Y.	Personal Income and Earnings Tax
North Middleton Township, Pa.	Earned Income Tax
Oberlin, Ohio	City Income Tax
Philadelphia, Pa.	City Wage Tax
Pittsburgh, Pa.	(Occupation Tax and (Municipal Tax
Plains Township, Pa.	(Earned Income Tax and (Occupational Privilege Tax
Pontiac, Mich.	City Income Tax
Reading, Pa.	(Earned Income Tax and (Occupation Privilege Tax
Richmond, Ky.	City License Fee
Saginaw, Mich.	City Income Tax
Scranton, Pa.	(Earned Income Tax and (Occupational Privilege Tax
Sharonville, Ohio	City Income Tax
South Lebanon Township, Pa.	Occupational Privilege Tax
Springfield, Ohio	Earned Income Tax
St. Louis, Mo.	City Income Tax
Toledo, Ohio	City Income Tax
Whitehall, Ohio	City Income Tax
Wilkes Barre, Pa.	Earned Income Tax
Wilmington, Del.	Earned Income Tax
Youngstown, Ohio	City Income Tax

ORDER

This cause comes before this Court on plaintiffs' motion for class determination. The amended complaint in this case names 13 Judges of the United States Courts as plaintiffs. They bring the suit on their own behalf and on behalf of all persons similarly situated. In their two-count complaint, plaintiffs seek a declaration that the compensation clause of Article III, Section 1 of the Constitution of the United States was abrogated and violated by the enactment of portions of Title II of the Legislative Branch Appropriation Act of 1977, 90 Stat. 1439, and Public Law 95–66, 91 Stat. 270. It is alleged that both of these laws operated to deny the plaintiffs cost-of-living increases in their salaries which would otherwise have taken place pursuant to the Executive Salary Cost-of-Living Adjustment Act, 28 U.S.C. Section 461.

Rule 23 of the Federal Rules of Civil Procedure contains the essential prerequisites for maintaining a class action. Pursuant to subsection (a) of Rule 23, one or more members of a class may sue or be sued on behalf of the class if:

(1) The class is so numerous that joinder of all members is impracticable;

(2) There are questions of law or fact common to the class;

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) The representative parties will fairly and adequately protect the interests of the class.

Rule 23(a)(1) is clearly met in that the proposed class consists of more than 600 persons who served as Judges of the United States Courts pursuant to Article III of the Constitution of the United States. Obviously, joinder of all 600 persons would be impracticable.

Rule 23(a)(2) is met in that the facts and legal issues involved here are the same for every member of the class. We agree with plaintiffs when they note that there are no individual issues in the case. The effect of the statutes in question was identical for each class member. This also

more than satisfies the requirement that the representative parties' claims be typical of the claims of the class, as required by Rule 23(a)(3).

Finally, Rule 23(a)(4) is clearly met. The claims of the named plaintiffs are the same as the claims of all the class members. Further, they are represented by experienced counsel.

Once the Rule 23(a) prerequisites are met, Rule 23(b)(2) must also be satisfied:

> The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Clearly, by enacting the statutes in question, the defendant "has acted . . . on grounds generally applicable to the class. . . ." Rule 23(b)(2) relief seems the most practical to ask for. The protections of individual notice and opting out are not necessary in this case, nor is exclusion available in a (b)(2) action. *Air Line Stewards and Stewardesses Association v. American Airlines, Inc.*, 490 F.2d 636 (7th Cir. 1973). Additionally monetary relief in the form of back pay is possible in a (b)(2) action. *See Robinson v. Lorillard Co.*, 444 F.2d 791, 802 (4th Cir. 1971), *app. dis.*, 404 U.S. 1006 (1971), where it was noted: ". . . the award of back pay, as one element of the equitable remedy, conflicts in no way with the limitations of Rule 23(b)(2)."

Accordingly, the requirements of Rule 23 of the Federal Rules of Civil Procedure having been met, this Court finds that this action is a proper class action, and that the named parties adequately represent the class. It is hereby ordered that this action and both counts thereof may properly be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

The class in Count I shall consist of all persons who served as Judges of the United States Courts pursuant to Article III of the Constitution of the United States during

part or all of the period commencing October 1, 1976 and continuing to March 1, 1977.

The class in Count II shall consist of all persons who served as Judges of the United States Courts pursuant to Article III of the Constitution of the United States prior to July 11, 1977 and who continued to hold said office subsequent to commencement of the first pay period following October 1, 1977.

No Judge appointed after July 11, 1977 is a member of either class.

ENTER:

STANLEY J. ROSZKOWSKI, JUDGE
United States District Court

Dated: March 20, 1979

In the Supreme Court of the United States

No. 79-983

UNITED STATES,

Appellant,

v.

HUBERT L. WILL, ET AL.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. In addition to the questions presented by the statement as to jurisdiction, the parties are directed to address the effect of 28 U.S.C. § 455 on the jurisdiction of the District Court and on the jurisdiction of this Court.

February 19, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1689

UNITED STATES OF AMERICA,

Appellant,

v.

HUBERT L. WILL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

RELEVANT DOCKET ENTRIES

10/22/79	1	Filed 10/19/79 complaint and 4 copies
10/22/79	2	Filed 10/19/79 Civil Cover Sheet
11/1/79	3	Enter order dated 10/30/79: It is ordered that plaintiffs and/or their counsel shall be and hereby are permitted to notify potential class members of this lawsuit and their status as potential members of the plaintiff class, and to state plaintiffs views concerning the consequences of any actions the judges may take in response to the Memorandum of the Administrative Office.—(DRAFT)—Roszkowski, J. Mailed notices 11/1/79
11/2/79	4	Filed 11/1/79 Motion pursuant to Civil Rule 22 of this court for an order permit-

		ting plaintiffs and/or their counsel to communicate directly with potential class members.
11/5/79	5	Filed 11/2/79 Affidavit under Rule 39 for Plaintiff's attorneys Richard J. Prendergast and Kevin M. Forde with Contingency Fee Agreement attached.
11/8/79	6	Filed 11/7/79 Plaintiffs' Amended Complaint
11/8/79	7	Filed 11/7/79 Plaintiffs' Motion for class determination
11/9/79	8	Enter order dated 11/7/79: Leave is granted to plaintiffs to file Amended Complaint and motion for Class Determination. Plaintiffs shall file their Brief in Support of their motion for summary judgment and any reply to defendant's objections to the motion for Class Determination on or before November 26, 1979. Defendant shall file its Memorandum in Opposition to the Motion for Summary Judgment and any Cross Motion and Memorandum in Support thereof by December 10, 1979. Plaintiffs' reply due on December 17, 1979.—ROSZKOWSKI, J. Mailed notices 11/9/79 (DRAFT)
11/19/79		Filed 11/16/79 Request for exclusion as member of class by Senior Judge Hogan. (not available)
11/19/79	9	Filed 11/16/79 Defendant's *Answer to Amended Complaint*
11/26/79	10	Filed 11/21/79 Defendant's Opposition to motion for class action certification
11/27/79	11	Filed 11/26/79 letter to Clerk from Neil H. Koslowe dated 11/21/79 re refiling of answer on proper size paper with no changes.

11/27/79		Filed 11/26/79 defendant USA's answer (refiling on proper size paper). (not available)
11/27/79	12	Filed 11/26/79 plaintiffs' motion for summary judgment.
11/27/79	13	Filed 11/26/79 plaintiffs' memorandum in reply to defendant's opposition to class certification.
11/28/79	14	Filed 11/27/79 plaintiffs' memorandum in support of plaintiffs' motion for summary judgment.
11/28/79	15	Enter order dated 11/27/79: Leave is hereby granted both to plaintiffs and to defendant to file briefs in support of and in opposition to plaintiffs' motion for summary judgment in excess of 15 pages, and plaintiffs are hereby given leave to file their memorandum instanter. — Roszkowski, J Mailed notices 11/28/79
12/5/79	16	Filed 12/4/79 defendant's response to plaintiffs' reply to defendant opposition to class certification.
12/12/79	17	Enter order dated 12/11/79: By agreement of the parties the time within which defendant may file its memorandum in opposition to plaintiffs motion for summary judgment is extended to December 19, 1979. Plaintiffs may file their reply if any, to said memorandum on or before December 28, 1979. — Roszkowski, J Mailed notices 12/12/79
12/20/79	18	Filed 12/19/79 defendant's motion for summary judgment; memorandum of law in support of defendant's motion for summary judgment and in opposition to plaintiffs' motion for summary judgment.
1/10/80	19	Filed 12/21/79 plaintiffs' reply brief.

1/10/80	20	Filed 12/31/79 supplemental brief of plaintiffs in support of their motion for class certification; attachments
1/23/80	21	Filed 1/18/80 defendant's reply to supplemental brief of plaintiffs on plaintiffs' motion for class certification.
2/5/80	22	Enter order dated 1/31/80: Plaintiffs' motion for class certification is granted. Plaintiffs' motion for summary judgment is granted. Defendant's motion for summary judgment is denied. (DRAFT)—Roszkowski, J. Mailed notices 2/5/80 *JS-6*
2/15/80	23	Enter judgment pursuant to rule 58 dated 2/12/80.—by the clerk.
3/7/80	24	Filed 3/5/80 plaintiffs' motion pursuant to civil rule 22 of this court for an order permitting plaintiffs and/or their counsel to communicate directly with class members.
3/7/80	25	Enter order dated 3/5/80: Plaintiffs and/or their counsel are hereby granted leave to communicate directly with class members.—Roszkowski, J. Mailed notices 3/7/80
3/10/80	26	Filed 3/10/80 letter from Neil H. Koslowe to the Clerk dated 3/7/80 re notice of appeal.
3/10/79	27	Filed 3/10/80 defendant's notice of appeal to the Supreme Court, certificate of service. (no fee)
4/24/80	28	Filed 4/23/80 letter to the Clerk from Neil H. Koslowe dated 4/14/80 re Rule 12 of the Rules of The Supreme Court.
5/5/80	29	Enter order dated 4/28/80: The Clerk of the Court is directed to transmit the original documents in the above-captioned case to the Supreme Court of the United

States as the record on appeal pursuant to Rule 12 of the Rules of the Supreme Court.—Roszkowski, J.
Mailed notices 5/5/80

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 4368

HUBERT L. WILL, JOHN R. BARTELS, HENRY BRAMWELL, LLOYD H. BURKE, WILLIAM J. CAMPBELL, FRED J. CASSIBRY, MARK A. COSTANTINO, JACK M. GORDON, GEORGE B. HARRIS, IRIVING HILL, EDWARD R. NEAHER, THOMAS COLLIER PLATT, JR., GEORGE C. PRATT, AND SPENCER WILLIAMS, ON THEIR OWN BEHALF AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED,
Plaintiffs,

VS.

THE UNITED STATES OF AMERICA,
Defendant.

AMENDED COMPLAINT

Plaintiffs, by their counsel, complain on their own behalf and on behalf of all persons similarly situated, asserting the following as their claim against the United States:

COUNT I

JURISDICTION

1. This action arises under Article III of the Constitution of the United States. Plaintiffs invoke the jurisdiction of this Court under Title 28, United States Code, Section 1346(a)(2). The individual claim of plaintiffs and that of each member of the class they seek to represent does not exceed Ten Thousand Dollars ($10,000.00).

PARTIES

2. (a) Plaintiff JOHN R. BARTELS is a Senior United States District Judge and a member of the United States District Court for the Eastern District of New York.

(b) Plaintiff HENRY BRAMWELL is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(c) Plaintiff LLOYD H. BURKE is a United States District Judge and a member of the United States District Court for the Northern District of California.

(d) Plaintiff WILLIAM J. CAMPBELL is a Senior United States District Judge and a member of the United States District Court for the Northern District of Illinois.

(e) Plaintiff FRED J. CASSIBRY is a United States District Judge and a member of the United States District Court for the Eastern District of Louisiana.

(f) Plaintiff MARK A. COSTANTINO is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(g) Plaintiff JACK M. GORDON is a United States District Judge and a member of the United States District Court for the Eastern District of Louisiana.

(h) Plaintiff GEORGE B. HARRIS is a Senior United States District Judge and a member of the United States District Court for the Northern District of California.

(i) Plaintiff IRVING HILL is a United States District Judge and is Chief Judge of the United States District Court for the Central District of California.

(j) Plaintiff EDWARD R. NEAHER is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(k) Plaintiff THOMAS COLLIER PLATT, JR., is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(l) Plaintiff GEORGE C. PRATT is a United States District Judge and a member of the United States District Court for the Eastern District of New York.

(m) Plaintiff HUBERT L. WILL is a Senior United States District Judge and a member of the United States District Court for the Northern District of Illinois.

(n) Plaintiff SPENCER WILLIAMS is a United States District Judge and a member of the United States District Court for the Northern District of California.

3. Plaintiffs were appointed to their present offices

within the United States Judiciary by the President of the United States with the advice and consent of the United States Senate pursuant to Article III, Section 2 of the Constitution of the United States and have served as Federal Judges pursuant to Article III of the Constitution of the United States during the period commencing prior to October 1, 1978 through and including the filing of this action.

4. The defendant is the United States of America.

CLASS ACTION ALLEGATIONS

5. Count I of this action is brought by plaintiffs on their own behalf and as a class action on behalf of all persons who have served as Judges of the United States pursuant to Article III of the Constitution of the United States prior to October 1, 1978, and who continued to hold said Office subsequent to commencement of the first pay period thereafter.

6. The Class which consists of more than 600 persons is so numerous that joinder of all its members before this Court is impracticable.

7. There are questions of law or fact common to the class.

8. The claims of plaintiffs are typical of the claims of the Class.

9. The named plaintiffs, with their counsel, will fairly and adequately protect and represent the interests of the Class.

10. The party opposing the Class has acted and has refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

CLAIM

11. Article III, Section 1 of the Constitution of the United States provides in pertinent part that Judges of

the United States Courts "shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

12. The Compensation of a federal judge is defined in part at 28 U.S.C. §135 which provides in pertinent part that "Each Judge . . . shall receive a salary at an annual rate determined under Section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361) as adjusted by [the Executive Salary Cost-of-Living Adjustment Act]."

13. Under the Executive Salary Cost-of-Living Act (P.L. 94–82), 5 U.S.C. §5318 and 28 U.S.C. §461 enacted August 9, 1975, the annual rate of pay for positions at each level of the Executive Schedule (which schedule includes all federal judges appointed and serving pursuant to Article III, Section 1 of the United States Constitution) is required to be adjusted by a percentage equal to the average annual percentage increase in the General Schedule, granted pursuant to the Federal Pay Comparability Act of 1970, 5 U.S.C. §5305 et seq., which provides the mechanism for annually adjusting the rates of pay of most federal employees.

14. Pursuant to the herein described statutory scheme, the compensation of plaintiffs and each member of their Class consists of a stated salary augmented annually by a cost-of-living adjustment which takes effect the first pay period following October 1 of each year, including 1978. Only the actual amount of said cost-of-living adjustment remains undetermined until on or about October 1 of the applicable year, that to be ascertained on the basis of the average adjustment granted to General Schedule employees under the applicable provisions of the Federal Pay Comparability Act of 1970.

15. On September 30, 1978, P.L. 95–391 became law, providing in pertinent part that:

> No part of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the . . . judicial

> branch . . . at a rate which exceeds the rate . . . of salary or basic pay payable for such office or position for September 30, 1978, if the rate of salary or basic pay for such office or position is fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code . . .

Section 304(a)(1) of P.L. 95-391.

16. The lowest salary level of any federal judge was fixed at a rate equal to or greater than the rate of basic pay for level V of the Executive Schedule on September 30, 1978; accordingly, all Class members' salaries were affected by Public Law 95-391.

17. On October 7, 1978, the President of the United States issued Executive Order No. 12087, increasing by an average of 5.5% the rates of pay theretofore paid to plaintiffs and their Class, among others, pursuant to the applicable provisions of the Federal Pay Comparability Act of 1970 and the Executive Salary Cost-of-Living Act. Because of the prohibition set forth in Public Law 95-391, however, the 5.5% adjustment was not paid to federal judges as provided, notwithstanding those provisions of the Executive Salary Cost-of-Living Act, 5 U.S.C. §5318 and 28 U.S.C. §461, which require that the rates of pay of Judges be adjusted by a percentage equal to the average percentage increase in the General Schedule and notwithstanding the provisions of said Executive Order.

18. The Action of Congress in refusing to appropriate or otherwise withholding funds necessary to pay the full, lawful salary of federal judges did not suspend or repeal the statutory obligation to pay said obligations.

19. The failure and refusal to appropriate funds provided under the Executive Salary Cost-of-Living Act, as that Act pertains to federal judges, did not suspend or postpone the operation of the Cost-of-Living Adjustment Act and did not limit the rates of pay established thereunder. Thus the legal rate of pay for federal judges was increased by 5.5% effective October 1, 1978.

20. Plaintiffs and their Class are entitled to receive

their full statutory salary without regard to the efforts of defendant to limit said salary and without regard to defendant's refusal to pay this full statutory salary.

21. Public Law 95–391 and actions taken pursuant thereto have diminished the compensation of plaintiffs and their Class, in violation of Article III, Section 1 of the Constitution of the United States, and said actions, as applied to plaintiffs and their Class, are therefore unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

A. That this Court find that this action is a proper class action, and that the named parties adequately represent the Class.

B. That upon said findings, this Court order that this action may properly be maintained as a class action as the Class is defined by plaintiffs in this Complaint.

C. That this Court declare that the actions of the defendant as set forth in Court I of this Complaint violate the provisions of Article III, Section 1, which proscribes the diminution of judicial compensation.

D. That Public Law 95–391, as applied to plaintiffs and their Class, be declared unconstitutional.

E. That this Court declare that defendant's refusal to appropriate funds necessary to pay plaintiffs and their Class their full statutory salary is illegal and does not have the effect of limiting the obligation to pay said salaries.

F. That this Court order defendant, United States of America, to pay to plaintiffs individually and to each member of their Class all compensation due for the period October 1, 1978 to the date of judgment, by virtue of the diminution of their compensation in violation of Article III, Section 1 of the Constitution of the United States, and the other wrongs complained of.

G. That plaintiffs and each member of their Class recover whatever interest would have been earned on any compensation wrongfully withheld.

H. That plaintiffs recover the costs of this action and be granted such further relief as this Court deems just and appropriate.

COUNT II

1-4. Plaintiffs reallege, as paragraphs 1 through 4 of Count II, paragraphs 1 through 4 of Count I.

CLASS ACTION ALLEGATIONS

5. Count II of this action is brought by plaintiffs on their own behalf and as a class action on behalf of all persons who served as Judges of the United States pursuant to Article III of the Constitution of the United States prior to October 1, 1979 and who continued to hold said office subsequent to October 12, 1979.

6-10. Plaintiffs reallege, as paragraphs 6 through 10 of Count II, paragraphs 6 through 10 of Count I.

CLAIM

11. Article III, Section 1 of the Constitution of the United States provides in pertinent part that Judges of the United States Courts "shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office".

12. The Compensation of a federal judge is defined in part at 28 U.S.C. §135 which provides in pertinent part that "Each Judge . . . shall receive a salary at an annual rate determined under Section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by [the Executive Salary Cost-of-Living Adjustment Act]."

13. Under the Executive Salary Cost-of-Living Act (P.L. 94-82), 5 U.S.C. §5318 and 28 U.S.C. §461 enacted August 9, 1975, the annual rate of pay for positions at each level of the Executive Schedule (which Schedule includes all federal judges appointed and serving pursuant to Article III, §1 of the United States Constitution), is required to be adjusted by a percentage equal to the average annual

percentage increase in the General Schedule, granted pursuant to the Federal Pay Comparability Act of 1970, 5 U.S.C. §5305 et seq., which provides the mechanism for annually adjusting the rates of pay of most federal employees.

14. Pursuant to the herein described statutory scheme, the compensation of plaintiffs and each member of their Class consists of a stated salary augmented annually by a cost-of-living adjustment which takes effect the first pay period following October 1 of each year, including 1979. Only the actual amount of said cost-of-living adjustment remains undetermined until on or about October 1 of the applicable year, that to be ascertained on the basis of the average adjustment granted to General Schedule employees under the applicable provisions of the Federal Pay Comparability Act of 1970.

15. On August 31, 1979, the President of the United States proposed an average adjustment in the statutory pay rates for federal employees to become effective October 1, 1979, in the amount of 7%.

16. In addition, prior to October 1, 1979, the Congress passed and the President signed into law, an appropriation [P.L. 96-86] for the payment of salaries of federal judges which did not include any limitation upon the use of funds to pay the full salary of federal judges provided by law.

17. On September 30, 1979 the purported restriction on the use of appropriated funds contained in Section 304 of P.L. 95-391 and referred to in paragraphs 15-18 of Count I of this Complaint, expired. Therefore effective October 1, 1979 the adjustments provided for in Executive Order 12087, referred to in paragraph 17 of Count I above, became payable without limitation.

18. Accordingly, on October 1, 1979, any prior limitation on the availability of funds to pay the October 1, 1978 adjustment—whether lawful or unlawful—was of no further effect, and the October 1, 1979 adjustment also went into effect. The aggregate of these adjustments results in a total adjustment of 12.9%.

19. Commencing October 1, 1979, the salary of plaintiffs and their Class was adjusted as set forth in paragraph 18 above, and funds were and are available to pay plaintiffs and their Class at the "adjusted" rates.

20. On October 12, 1979, the Congress adopted P.L. 96-86, which provides in pertinent part:

> For the fiscal year 1980, funds available for payment to executive employees, which includes Members of Congress, who under existing law are entitled to approximately 12.9 percent increase in pay, shall not be used to pay any such employee or elected or appointed official any sum in excess of 5.5 percent increase in existing pay and such sum if accepted shall be in lieu of the 12.9 percent due for such fiscal year.

21. Because of and relying on the adoption of P.L. 96-86, defendant has refused to pay plaintiffs and their Class the full compensation to which they are lawfully entitled.

22. P.L. 96-86, by its terms, did not suspend or postpone the operation of the Cost-of-Living Adjustment Act, did not limit the rates of pay established and already in effect thereunder, and did not abrogate the duty to pay plaintiffs and their Class their full compensation as required by law.

23. On its face and by its own terms P.L. 96-86 does not apply to plaintiffs and their Class.

24. By enactment of P.L. 96-86 and by its continued refusal and failure to pay plaintiffs and plaintiffs' Class the full statutory compensation to which they are entitled commencing October 1, 1979, and continuing through this date under 5 U.S.C. §5305, 5 U.S.C. §5318 and 28 U.S.C. §461, defendant has violated and continues to violate that provision of Article III, Section 1 which proscribes the diminution of the compensation of a federal judge during this continuance in office.

25. That P.L. 96-86 is unconstitutional is clear, for in failing and refusing to pay the full salary of Judges of the United States appointed pursuant to Article III, Section 1, Congress has reduced and diminished their compensa-

tion as established by law, in clear violation of Article III, Section 1 of the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

A. That this Court find that this action is a proper class action and that the named parties adequately represent the Class.

B. That upon said findings, this Court order that the action may properly be maintained as a class action as the Class is defined by plaintiffs in this Complaint.

C. That this Court declare that the actions of the defendant as set forth in Count II of this Complaint violate the provisions of Article III, Section 1 which proscribes the diminution of judicial compensation.

D. That P.L. 96-86 as applied to plaintiffs and their Class be declared unconstitutional.

E. That this Court declare that plaintiffs and their Class are entitled to compensation as set forth in this Count II of the Complaint and defendant's actions to limit or otherwise refuse to pay said compensation are illegal and of no lawful effect.

F. That this Court order defendant, the United States of America, to pay to plaintiffs individually and to each member of their Class all compensation due for the period October 1, 1979 through the date of judgment and satisfaction in this action.

G. That plaintiffs and each member of their Class recover whatever interest would have been earned on any compensation wrongfully withheld.

H. That plaintiffs recover the costs of this action and be granted such further relief as this Court deems just and appropriate.

KEVIN M. FORDE
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 79 C 4368

HUBERT L. WILL AND WILLIAM J. CAMPBELL,
Plaintiffs,

v.

UNITED STATES OF AMERICA
Defendant.

ANSWER

Defendant, United States of America, answers the amended complaint as follows:

FIRST DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

With respect to the numbered paragraphs of Count I of the complaint:

1. Deny, except to admit that if the individual claims of the plaintiffs and that of each member of the putative class they seek to represent do not exceed $10,000 in amount, the jurisdiction of this Court would be properly invoked under 28 U.S.C. 1346(a)(2) (1976).

2-3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.

4. Admit.

5. This paragraph contains plaintiffs' characterization of this action as to which no answer is required, but if an answer is deemed required, deny.

6-10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.

11-13. These paragraphs quote from or restate provisions of the Constitution and the United States Code, and the Court is respectfully referred to those provisions for full statements of their contents.

14. Deny.

15. This paragraph quotes from provisions of Public Law No. 95-391, and the Court is respectfully referred to that law for a full statement of its contents.

16. Deny, except to admit that the provisions of Public Law No. 95-391 applied to all judges appointed under Article III of the Constitution.

17. Deny, except to admit that Article III judges were not paid any salary increase during fiscal 1978.

18-21. These paragraphs contain conclusions of law and not allegations of fact to which answers are required, but if answers are deemed required, deny.

THIRD DEFENSE

With respect to the numbered paragraphs of Count II of the complaint:

1-4. Defendant repeats the answers given in its second defense as to numbered paragraphs 1-4 of Count I.

5. This paragraph contains plaintiffs' characterization of this action as to which no answer is required, but if an answer is deemed required, deny.

6-14. Defendant repeats the answers given in its second defense as to numbered paragraphs 6-14 of Count I.

15. Deny, except to admit that on August 31, 1979, the President transmitted to Congress an alternative pay plan under 5 U.S.C. 5305(c)(1) (1976), providing for a 7% increase in rates of pay at each grade for most employees paid under the federal statutory pay systems, including Article III judges.

16. Deny, except to admit that the Judiciary Appropriation Act, 1980, Public Law No. 96-86, 93 Stat. 427, which became effective on September 24, 1979, appropriates

money for salaries of Article III judges during the fiscal year October 1, 1979, through September 30, 1980.

17. Deny, except to admit that the provisions of Public Law No. 95-391 were in effect during the fiscal year October 1, 1978, through September 30, 1979.

18. Deny, except to admit that under the Executive Salary Cost-of-Living Adjustment Act, 28 U.S.C. 461 (1976), and the Pay Comparability Act, 5 U.S.C. 5305(c)(2), (n) (1976), the alternative pay plan transmitted by the President to Congress on August 31, 1979, became effective for Article III judges on October 1, 1979.

19. Deny, except to admit that the alternative pay plan transmitted by the President to Congress on August 31, 1979, became effective for Article III judges on October 1, 1979.

20. This paragraph quotes from Public Law No. 96-86, and the court is respectfully referred to that law for a full statement of its contents.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

22. Deny.

23. Deny.

24-25. These paragraphs contain conclusions of law and not allegations of fact to which answers are required, but if answers are deemed required, deny.

Defendant also denies the prayers for relief in Counts I and II of the amended complaint, and also specifically denies all of the allegations of the amended complaint not previously answered.

Having fully answered the amended complaint, defendant prays that this action be dismissed and that the Court grant such other relief as may be appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 1979, I served the foregoing Answer upon counsel for plaintiffs, by causing a copy to be mailed, postage prepaid, to:

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NEIL H. KOSLOWE
Attorney

Supreme Court of the United States

No. 79-1689

UNITED STATES, APPELLANT,

v.

HUBERT L. WILL, ET AL.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The motion of the Solicitor General to consolidate this case with No. 79-983, *Will* v. *United States*, for briefing and oral argument is granted. A total of one and one-half hours is allotted for oral argument.

June 16, 1980

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